

**CITY PLANNING & ZONING COMMISSION
MEETING MINUTES
December 15, 2010**

The Bismarck Planning & Zoning Commission met on December 15, 2010, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Chairman Yeager presided.

Commissioners present were Mark Armstrong, Tom Atkinson, Mel Bullinger, Jo Conmy, Jack Hegedus, Curt Juhala, Vernon Laning, Ken Selzler, Wayne Yeager, Lisa Waldoch and John Warford.

Staff members present were Carl Hokenstad – Community Development Director, Kim Lee – Planning Manager, Gregg Greenquist – Planner, Jason Tomanek – Planner, Kimberley Gaffrey – Office Assistant III, Ray Ziegler – Building Official and Charlie Whitman – City Attorney.

Others present were David Patience – 909 Basin Avenue, Mark Braun – 1324 Riverwood Drive, Brian Eiseman and Brent Erickson – 128 Soo Line Drive, Mike Barrett – 3876 Prairie Pine Loop, Tom and Mary Tupa – 207 East Brandon Drive, Kelly Olson – 129 East Brandon Drive, Doug Buckman – 141 East Brandon Drive, Ronda Fox – 3004 Ontario Lane, Camille Bickel – 2992 Ontario Lane, Jane Vetter – 2974 Ontario Lane, David Mayer – 3206 Winnipeg Drive, Anne and Keith Eliason – 147 East Brandon Drive, Matthew Stone – 3158 Winnipeg Drive, Hank Albers – 3200 Winnipeg Drive, Lucy Ziegler – 115 East Brandon Drive, Sarah McCullough – 3301 Winnipeg Drive, Gary & Linda Oster – 3218 Winnipeg Drive, Jim & Sharon Wilson – 8459 Burr Oak Loop, Jean & George Hilts – 1258 West Highland Acres Road, Marlene & David Krebsbach – 201 East Brandon Drive, Richard Roehrich – 2968 Ontario Lane, Delores Paul & Gordon Berge – 2976 Ontario Lane, Tom Kary – 216 East Calgary Avenue, Shelly Roningen – 135 East Calgary Avenue and Loran Galpin – 501 East Main Avenue.

INTRODUCTION OF COMMISSIONER TOM ATKINSON

Chairman Yeager introduced Tom Atkinson, a new Commissioner representing the City.

MINUTES

Chairman Yeager called for consideration of the minutes of the November 17, 2010 meeting.

MOTION: Commissioner Armstrong made a motion to approve the minutes of the November 17, 2010 meeting as received. Commissioner Warford seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

**CONSIDERATIONS –
ZONING CHANGE FROM A TO RR AND PRELIMINARY PLAT –
ASHLAND ESTATES II SUBDIVISION**

Chairman Yeager called for consideration of the following consent agenda item:

- A. A zoning change from the A-Agricultural zoning district to RR-Residential zoning district and preliminary plat for Ashland Estates II Subdivision. The property is 2 lots in 1 block on 4.99 acres located approximately 6½ miles south of downtown Bismarck, on the south side of Sibley Drive between Briardale Third Subdivision and Ashland Estates (Lot D of the NW¼ of the SW¼ of Section 3, T137N-R80W/Fort Rice Township).

Commissioner Hegedus commented that there is an issue with a secondary access and based on the findings in the staff report, made a motion to deny the request until the access issues are resolved.

MOTION: Commissioner Hegedus made a motion to deny the zoning change from A-Agricultural to RR-Residential for Ashland Estates II Subdivision. Commissioner Laning seconded the motion with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Warford and Yeager voting in favor of the motion and Commissioner Waldoch voting against. The motion passed 10-1.

PUBLIC HEARING – FINAL PLAT – MDU SUBSTATION SUBDIVISION

Chairman Yeager called for the public hearing for the final plat for MDU Substation Subdivision. The property is located northeast of Bismarck, a corner lot southeast of the intersection of Centennial Road and 43rd Avenue NE (NE¼ of Section 24, T139N-R80W/Hay Creek Township).

Mr. Greenquist provided an overview of the request and listed the following findings for the final plat:

1. A zoning change is not needed and although the Future Land Use Plan shows this area as “Neighborhood Commercial” utility service group uses such as an electrical substation are allowed in any zoning district.
2. The proposed subdivision complies with the Fringe Area Road Master Plan. Adequate right-of-way will be dedicated for 43rd Avenue. Adequate right-of-way already exists along Centennial Road.
3. Access to the property is provided by an approach on 43rd Avenue NE.
4. The proposed subdivision is compatible with adjacent land uses and would not adversely affect property in the vicinity. A landscaped buffer yard will be installed on the east side of this lot.

5. Surrounding land uses include undeveloped agricultural land to the north, south and west. There is a church to the east and a rural residential subdivision to the northwest.
6. The proposed plat is consistent with all adopted plans, policies and accepted planning practices.
7. The Storm Water Management Plan has been approved by the City Engineer.

Mr. Greenquist said that based on the above findings, staff recommends approval of the final plat of MDU Substation Subdivision, with the following conditions:

1. That the buffer yard is planted by June 15, 2011 or in conjunction with the development of the site, whichever comes first; and
2. The landscape plan for the buffer yard must be submitted to and approved by City staff prior to the request being forwarded to the Board of City Commissioners for final action.

Chairman Yeager opened the public hearing for the final plat of MDU Substation Subdivision.

Mike Barrett said he does not understand what exactly a substation is and wants to know if there will be any overhead power lines running from it. Mr. Patience said the design is similar to most other substations and believes the overhead transmission line will run to the west along the south side of 43rd Avenue, but would go into the substations underground. He said additional questions would have to be answered by MDU.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Laning made a motion to approve the final plat of MDU Substation Subdivision with the following conditions: 1) that the buffer yard is planted by June 15, 2011 or in conjunction with the development of the site, whichever comes first; and 2) the landscape plan for the buffer yard must be submitted to and approved by City staff prior to the request being forwarded to the Board of City Commissioners for final action. Commissioner Hegedus seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE FROM R5-RESIDENTIAL, R10-RESIDENTIAL AND RM15-RESIDENTIAL TO R5-RESIDENTIAL AND R10-RESIDENTIAL AND FINAL PLAT – ROCKY HEIGHTS ADDITION

Chairman Yeager called for the public hearing for the zoning change from the R5-Residential, R10-Residential and RM15-Residential zoning districts to the R5-Residential and R10-Residential zoning districts and the final plat for Rocky Heights Subdivision. The property is located in north Bismarck, along the east side of North Washington Street, north of Century Avenue between the Juniper Drive and Aspen Drive intersections (SW¼ of Section 21, T139N-R80W/Hay Creek Township).

Ms. Lee provided an overview of the request and listed the following findings for the zoning change:

1. The proposed zoning change is compatible with adjacent land uses. Adjacent land uses include single and two-family dwellings to the west; a church to the northwest; single family dwellings to the north and east; single family, duplex and row-house dwellings to the south.
2. The subdivision proposed for this property will be an urban residential subdivision and has already been annexed; therefore, the zoning change will not place an undue burden on public services.
3. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.

Ms. Lee then listed the following findings for the plat:

1. The proposed plat is not completely consistent with all technical requirements for a final plat. In particular, the double-frontage lot situation is an issue.
2. For double-frontage lots backing on local residential streets, the ordinance does not establish a minimum separation distance between a rear lot line and a street.
3. The proposed plat is compatible with adjacent land uses. Adjacent land uses include single and two-family dwellings to the west; a church to the northwest; single family dwellings to the north and east; single family, duplex and row-house dwellings to the south.
4. The proposed subdivision will be an urban residential subdivision and has already been annexed; therefore, it will not place an undue burden on public services.
5. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
6. The Storm Water Management Plan has been approved by the City Engineer.

Ms. Lee then provided the following additional information:

1. A single access on North Washington Street is shown at the northwest corner of the subject parcel. A looped roadway with two access points is unfeasible. A street constructed on the steep hillside would exceed the maximum allowable grade. A cul-de-sac has been requested and is acceptable.
2. The location of Aspen Drive creates a double-frontage lot situation with four lots along the north side of this plat. The developer has offered a buffer strip of 20-feet to separate these lots from the new street right-of-way.

3. Section 14-09-05(4)(e) of the Bismarck Ordinance says: Double frontage or reverse frontage lots shall not be permitted except where lots back on arterial streets or highways, or where topographic or other conditions render subdividing in another fashion unreasonable. Such double frontage lots shall have an additional depth of at least twenty (20) feet over and above normal lot size in order to allow screen planting and landscaping along the back lot line.
4. The ordinance allows an exception for double-frontage lots which back on arterial streets or highways. Aspen Court is a local residential street. When designing new subdivisions and creating double frontage lots along arterials, the newly created lots are vacant, undeveloped. The buyers of those new lots willingly choose to purchase and live on a double frontage lot. Although the current residents to the north of the proposed plat did not choose to live on double frontage lots, it was a reasonable expectation that someday the property to their south could be subdivided.
5. The ordinance allows another exception from the double frontage lot ban “where topographic or other conditions render subdividing in another fashion unreasonable”. Topography does not completely prohibit the proposed street from being relocated.
6. One negative aspect for the homes to the north would be having car headlights shining into their rear windows. To screen headlights, the developer has proposed landscaping be installed on the 20-foot buffer strip (see landscaping proposal). The proposed tree species and density indicated on the consultant’s landscaping plan may not adequately protect those properties from headlight glare.
7. Staff had earlier indicated to the owners’ representatives that the staff recommendation on this plat would be to retain the existing row of mature juniper trees along the north edge of the proposed plat and plant additional new trees to allow them to become established and eventually replace the aging junipers. Staff had indicated that a buffer lot of 50-feet in width would be recommended for the north edge of the proposed plat. A buffer lot of that width would have contained the mature junipers. The representatives disagreed with the staff recommendation and the existing junipers were cut down.
8. For any new landscaping in this buffer strip to be effective, it would have to be more densely planted than shown on the consultants’ landscaping plan with replacement conifers of a suitable size.
9. Staff has since looked at alternative spacing for this area north of Aspen Court. It is possible with the proposed 20-foot buffer strip to locate the new street so the curb would be at least 43-feet south of the northern property line. A new sidewalk of 4½-feet in width would be located somewhere north of the curb.

Ms. Lee said based on the above findings, staff reluctantly recommends approval of the zoning change from the R5-Residential, R10-Residential and RM15-Residential zoning districts to the R5-Residential and R10-Residential zoning districts and the final plat for Rocky Heights Subdivision, with the following conditions:

1. That the buffer lot of 20-feet in width and landscaping contained within it be under common ownership of a Rocky Heights homeowners' association and maintained by the association in perpetuity
2. That the width and alignment of the paved portion of the east/west segment of Aspen Drive be configured to result in a separation distance of 43-feet between the north property line and the north curb
3. That the landscape plan for the buffer yard must be revised, submitted to and approved by City staff prior to the request being forwarded to the Board of City Commissioners for final action
4. That the buffer yard is planted by June 15, 2011 or in conjunction with the development of the site, whichever comes first; and
5. That the landscaping materials be planted prior to any building permits being issued for this subdivision and that all plant materials are maintained in a healthy condition for perpetuity.

Ms. Lee also distributed letters to the Bismarck Planning & Zoning Commissioners from the East Brandon homeowners, the Winnipeg Drive property owners, the Century Park Condominium Association and Paul and Jennifer (Montz) Rechlin, attached as Exhibit A, Exhibit B, Exhibit C and Exhibit D.

Chairman Yeager called for the public hearing for the zoning change from the R5-Residential, R10-Residential and RM15-Residential zoning districts to the R5-Residential and R10-Residential zoning districts and the final plat for Rocky Heights Subdivision.

Tom Tupa said he lives on East Brandon Drive and is one of the homeowners who helped write the letter attached as Exhibit A. Mr. Tupa read the opening section, paragraphs 1, 5 and 7 and the closing section of the letter, which dealt with concerns regarding drainage, erosion control and utility easements.

Doug Buckman stated that he lives on East Brandon Drive and is one of the homeowners who helped write the letter attached as Exhibit A. Mr. Buckman read paragraphs 4, 6 and 8 of the letter, which dealt with concerns regarding the need for a buffer yard, ground water levels and the impact on property values.

Anne Eliason added that she also lives on East Brandon Drive and is one of the homeowners who helped write the letter attached as Exhibit A. Ms. Eliason read paragraphs 2 and 3 of the letter, which dealt with concerns regarding double frontage lots, maintenance of the area north of Aspen Court.

Shelly Roningen said that she lives on East Brandon Drive as well and has many concerns with the proposed development. Ms. Roningen explained that her concerns are with the double frontage property, the trees that have already been removed, the maintenance of the buffer yard that will be located on Lot 13, the traffic that will be adjacent to her backyard, the ongoing

constructions noises and the overall negative impact the proposed development will have on her and the surrounding neighbors.

Gary Oster stated that that he lives on Winnipeg Drive and then distributed a letter from the Winnipeg Drive landowners and a letter from Paul and Jennifer (Montz) Rechlin, attached as Exhibit B and Exhibit D. Mr. Oster read and explained the seven points of concern that the Winnipeg Drive landowners have, as outlined in Exhibit B (drainage, site grading, erosion control, the need for a buffer area, special assessments, impact on property values and the impact of R10 zoning).

Gordon Berge said that he lives on Ontario Lane and expressed his concerns as outlined in the letter from the Century Park Condominium Association, attached as Exhibit C (drainage, soil erosion and privacy and noise concerns.

David Mayer stated that he lives on Winnipeg Drive and shares the same views of the issues that have already been discussed. Mr. Mayer commented that he is also concerned with the fact that there are not two access points to the development, the cul-de-sac waiver, double frontage lots, and the density of the proposed development.

Brian Eiseman with Kadrmas Lee & Jackson said that he is speaking on behalf of the owners of the proposed development. Mr. Eiseman went on to say that the current owners met with City staff before the property was even purchased and were told the only two access points that would be allowed would be the existing access point and then one further to the south because they would line up with existing streets, however, the south access will not work because of the grade of the land. Mr. Eiseman continued by saying he is aware of the concerns regarding special assessments and that no one wants any special assessments to be placed on the neighbors for any streets or storm water improvements for this project and the developer agrees with that. He said that the double frontage lots are a huge issue and they are not recommended except in extraordinary circumstances and there must be a 20 foot buffer. This is an extraordinary circumstance so the road was moved to the south to allow for a 20 foot buffer. Mr. Eiseman then stated that drainage is also a big issue and there are a whole lot of dynamics that are going on with the drainage and double frontage lots that are not working together in particular the further south the road is moved, the worse the drainage will become. He said that how the proposed plat is designed will alleviate most of the storm water concerns. Mr. Eiseman explained that the trees on the north side of the property were removed because that was always the intent and it was not done maliciously and the timing was unfortunate. He added that a horticulturist at North Dakota State University was consulted and the horticulturalist said to remove them, as they will not survive construction. Not only that, the horticulturist also indicated the trees serve no purpose and they are insect and rodent infested. Mr. Eiseman commented that a landscape plan has been submitted and it includes the replacement of those trees. He added that there is no intention on removing any of the rest of the trees surrounding the property. Mr. Eiseman said he understands about the headlight issue and it happens all over town, but the fact that the proposed development is low and that should help cut down on the amount of traffic. He went on to say that after the plat is approved, then a development plan will be prepared that will address the grading plans, the soil erosion plan and water and sewer plans will be submitted and reviewed by the City.

Commissioner Hegedus asked if the 20 foot buffer zone and the 43 foot separation requirements are included in the proposed plat and if they fit into the plan. Mr. Eiseman said yes, they are included in the proposed plat and it does work well.

Commissioner Armstrong inquired if there has been any thought to the possibility of underground springs in this area. Mr. Eiseman responded by saying there have not been any geotechnical investigations completed on this site yet, but if some are found during the investigation then the design of the development will have to accommodate whatever is found and he added that they are well aware of the water issues in the area.

Commissioner Warford asked about the utilities. Mr. Eiseman answered by saying he is waiting for return calls from the utility companies on where they would like to access this property. The utility companies have seen the proposed plat and are comfortable with the proposed easements shown on the plat.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Hegedus made a motion to approve the zoning change from the R5-Residential, R10-Residential and RM15-Residential zoning districts to the R5-Residential and R10-Residential zoning districts and the final plat for Rocky Heights Subdivision, with the following conditions: with the following conditions: 1) that the buffer lot of 20-feet in width and landscaping contained within it be under common ownership of a Rocky Heights homeowners' association and maintained by the association in perpetuity; 2) that the width and alignment of the paved portion of the east/west segment of Aspen Drive be configured to result in a separation distance of 43-feet between the north property line and the north curb; 3) that the landscape plan for the buffer yard must be revised, submitted to and approved by City staff prior to the request being forwarded to the Board of City Commissioners for final action; 4) that the buffer yard is planted by June 15, 2011 or in conjunction with the development of the site, whichever comes first; and 5) that the landscaping materials be planted prior to any building permits being issued for this subdivision and that all plant materials are maintained in a healthy condition for perpetuity. Commissioner Atkinson seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – ZONING CHANGE FROM A-AGRICULTURAL TO RR-RESIDENTIAL AND FINAL PLAT – WOODRUFF SUBDIVISION

Chairman Yeager called for the public hearing for the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and the final plat for Woodruff Subdivision. The property is located west of 66th Street NE, south of 71st Avenue NE and north of Rocky Road (part of the NE¼ of Section 7, T139N-R79W/Gibbs Township).

Ms. Lee provided an overview of the request and listed the following findings for the zoning change:

1. The proposed zoning change would be consistent with the Land Use Plan, which identifies the long range use of this area as urban residential (Bismarck-Mandan Regional Land Use Plan).
2. The proposed zoning change is compatible with adjacent land uses. Adjacent land uses include rural residential to the south and agricultural land to the west, north and east.
3. The property included in the zoning change is already developed, has access via a private drive to Rocky Road, and is served by South Central Regional Water District; therefore, the zoning change will not place an undue burden on public services.
4. The proposed zoning change would not adversely affect property in the vicinity.
5. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance.
6. The proposed zoning change is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee then listed the following additional information:

1. Since the proposed subdivision is located partially within the two to four-mile ETA, it is subject to joint jurisdiction procedures as established by NDCC 40-47-01.1. Burleigh County can participate in decisions on development proposals in the area of joint jurisdiction. The County may object to the City's final decisions and request negotiation within 30 days of the decision. If the City and County do not come to an agreement within 30 days, the dispute is submitted to a committee for mediation. If the mediation committee is unable to resolve the dispute to the satisfaction of the City and Burleigh County, the dispute must be resolved by the Burleigh County Board of Commissioners.
2. The property included in the proposed subdivision was split off from the surrounding agricultural property with a plat of irregular description in 2006. The plat of irregular description included the following note, "Due to its size (under 40 acres) and its current zoning, Agriculture, this parcel constitutes a non-conforming use. No further building permit will be allowed for this parcel until it is platted and zoned."

Ms. Lee then listed the following findings for the plat:

1. All technical requirements for approval of a final plat have been met.
2. The storm water management plan has been approved by the City Engineer.
3. The proposed subdivision is in conformance with the Fringe Area Road Master Plan, which identifies 59th Street NE as the north-south collector for this section.

4. The proposed subdivision is compatible with adjacent land uses. Adjacent land uses include rural residential to the south and agricultural land to the west, north and east.
5. The property included in the proposed subdivision is already developed, has access via a private drive to Rocky Road, and is served by South Central Regional Water District; therefore, the proposed subdivision would not place an undue burden on public services.
6. The proposed subdivision would not adversely affect property in the vicinity.
7. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance and subdivision regulations.
8. The proposed subdivision is consistent with the master plan, other adopted plans, policies and accepted planning practice.

Ms. Lee then listed the following additional information:

1. The Gibbs Township Board of Supervisors has recommended approval of the proposed subdivision.
2. Since the proposed subdivision is located partially within the two to four-mile ETA, it is subject to joint jurisdiction procedures as established by NDCC 40-47-01.1. Burleigh County can participate in decisions on development proposals in the area of joint jurisdiction. The County may object to the City's final decisions and request negotiation within 30 days of the decision. If the City and County do not come to an agreement within 30 days, the dispute is submitted to a committee for mediation. If the mediation committee is unable to resolve the dispute to the satisfaction of the City and Burleigh County, the dispute must be resolved by the Burleigh County Board of Commissioners.
3. The property included in the proposed subdivision was split off from the surrounding agricultural property with a plat of irregular description in 2006. The plat of irregular description included the following note, "Due to its size (under 40 acres) and its current zoning, Agriculture, this parcel constitutes a non-conforming use. No further building permit will be allowed for this parcel until it is platted and zoned."
4. Access to the parcel is provided via a private access easement and a privately-maintained drive on the east half of the 59th Street NE right-of-way (only the east half of the roadway is dedicated) from the west end of Rocky Road. The applicant is in the process of obtaining an additional private access easement over the adjacent property to accommodate the alignment of the existing driveway.
5. The current access to the parcel will not change with the proposed plat; however, there is some concern about the continued use of the east-west portion of the private access easement when the adjacent property is developed. Because the location of this private access easement creates a double-frontage issue for the developed lots to the south, it would be undesirable to turn it into a public roadway. With future development of the adjacent property and the creation of public roadways in this area, access to the property in this plat may need to be modified.

Ms. Lee said based on the above findings, staff reluctantly recommends approval of the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and final plat for Woodruff Subdivision, with the understanding that the property owner will work with the adjacent property owner to improve access to the property in this subdivision when the adjacent property is developed.

Chairman Yeager called for the public hearing for the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and final plat for Woodruff Subdivision.

There was no public comment.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff reports, Commissioner Armstrong made a motion to approve the zoning change from the A-Agricultural zoning district to the RR-Residential zoning district and final plat for Woodruff Subdivision, with the understanding that the property owner will work with the adjacent property owner to improve access to the property in this subdivision when the adjacent property is developed. Commissioner Laning seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

PUBLIC HEARING – SPECIAL USE PERMIT FOR LOTS 21-24 AND THE EAST 10 FEET OF THE VACTED ALLEY ADJACENT, BLOCK 40, GOVERNOR PIERCE ADDITION (112 24TH STREET SOUTH)

Chairman Yeager called for the public hearing for a special use permit to allow a drive-through window in conjunction with a bank on Lots 21-24 and the East 10-feet of the Vacated Alley Adjacent, Block 40, Governor Pierce Addition. The property is located along the east side of 24th Street South between Main Avenue East and Railroad Avenue (112 24th Street South).

Mr. Tomanek provided an overview of the request and listed the following findings for the special use permit:

1. A bank with a drive-through window is allowed as a special use in the MA zoning district, provided specific conditions are met. The proposed drive-through window meets all six provisions outlined in Section 14-03-08(4)(g) of the City Code of Ordinances (Zoning). A copy of this section the ordinance is attached.
2. The proposed special use would not adversely affect the public health, safety and general welfare.
3. The proposed special use would not be detrimental to the use or development of adjacent properties.

4. The use would be designed, operated and maintained in a manner that is compatible with the appearance of the existing character of the surrounding area.
5. Adequate public facilities and services are in place.
6. This use would not cause a negative effect, when considered in conjunction with the cumulative effect of other uses in the immediate vicinity
7. Adequate measures have been taken to minimize traffic congestion in the public streets and provide for appropriate on-site circulation of traffic, in particular, the public alley directly adjacent to the north property line will provide for adequate ingress and egress for the property, ample off-street parking is available on-site and stacking space for twelve vehicles in the drive-through lane would be provided.
8. The City Traffic Engineer has reviewed the proposed site plan and has no opposition to the special use permit to allow the operation of a drive-through.

Mr. Tomanek said that based on the above findings, staff recommends approval of the special use permit to allow a drive-through window in conjunction with a bank on Lots 21-24 and the east 10-feet of the vacated alley adjacent, Block 40, Governor Pierce Addition (112 24th Street South), with the following conditions:

1. The construction and operation of a drive-through window must meet all applicable requirements for such a use in the MA zoning district; and
2. Development of the site generally conforms to the site plan submitted with the application.

Chairman Yeager opened the public hearing for the special use permit on Lots 21-24 and the east 10-feet of the vacated alley adjacent, Block 40, Governor Pierce Addition (112 24th Street South).

No public comment was received.

Chairman Yeager closed the public hearing.

MOTION: Based on the findings contained in the staff report, Commissioner Warford made a motion to approve the special use permit allow a drive-through window in conjunction with a bank on Lots 21-24 and the east 10-feet of the vacated alley adjacent, Block 40, Governor Pierce Addition (112 24th Street South), with the following conditions: 1) the construction and operation of a drive-through window must meet all applicable requirements for such a use in the MA zoning district; and 2) development of the site generally conforms to the site plan submitted with the application. Commissioner Selzler seconded the motion and it was unanimously approved with Commissioners Armstrong, Atkinson, Bullinger, Conmy, Hegedus, Juhala, Laning, Selzler, Waldoch, Warford and Yeager voting in favor of the motion.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

There being no further business Chairman Yeager declared the Bismarck Planning & Zoning Commission adjourned at 6:55 p.m. to meet again on January 26, 2011.

Respectfully submitted,

Kimberley Gaffrey
Recording Secretary

Wayne Yeager
Chairman

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DEC 13 2010

December 9, 2010

Chairman Yeager and Planning Commission Members
Bismarck City Planning and Zoning Commission
City County Office Building
221 N 5th St.
Bismarck, ND 58501

Subject: Rocky Heights Proposed Development

Chairman Yeager,

Let us start by saying none of the surrounding home owners are opposed to the development of Rocky Heights. Our interest is that it be done without any negative impact to the current home owners, some who have been in their homes for more than 30 years.

If the project is not done with the current home owner concerns being addressed, we fear some of us could face some undue hardships as a result of the proposed development.

In identifying our concerns, we have had numerous neighborly discussions. We have also had several neighborhood meetings to discuss the proposed development. We reviewed and discussed the Storm Water Management Plan made available by the Community Development Department.

As current home owners and future neighbors to the new development owners, we bring these concerns to the attention of the Planning Commission. We believe our concerns and **suggestions would bring about a more attractive and harmonious neighborhood that would benefit the city, the property surrounding the proposed development and the development itself.**

Questions, Concerns, and Suggestions

1. Home owners, particularly on the south (Ontario) and the north (Brandon) sides of the proposed development, still have concerns about the run-off and drainage from the development. There is concern about heavy rain and snow melt flowing north and south. Could the proposed holding pond on Aspen be relocated and put onto the property rather than the road? Using a road as a detention pond is somewhat unusual. Other developments use existing property to control water discharge. With recent information, some of our concerns have been lessened and it now appears that much of the water (not necessarily all) from a 100 year storm will drain toward Washington Street and not flow northward onto the East Brandon properties directly north of Aspen Court.
2. There is major concern about the entrance of Aspen Court off Washington Street. The issues are double frontage roads, vehicle lights, noise, safety (young children with a street in their “back yard”) and the labeling of the road as public or private. If Aspen Court is private, the maintenance and upkeep would be the responsibility of the development property owners. If Aspen Court is a public road, would the homeowners on East Brandon (and perhaps

other owners) be assessed for the construction and upkeep of the road? It is our understanding the city no longer encourages double frontage roads. **We suggest the road be redesigned to follow more closely the original road to the top of the hill after entering from Washington.**

3. If Aspen Court becomes a public street, would the city be responsible to maintain the right of way on the north side of the road?
4. The current home owners believe a permanent “green zone” of some sort be established and maintained around the entire development. **We suggest a permanent buffer zone or a conservation easement of 50 feet be created for the homes that border the three residential sides of the entire proposed development and that mature trees be planted in the buffer/conservation easement to suppress noise and to eliminate the disturbance of automobile headlights of the Aspen Court traffic.**
5. Construction erosion could be a major issue for many adjacent home owners. Little is said about the water and wind erosion protection during the construction phase of the proposed development. **We suggest a silt fence (or some other suitable erosion containment process) be established around the entire project, and that if the silt fence is used that the bottom of the fence be buried and that it be periodically checked (and cleaned out if necessary) during the construction phase.** Home owners are concerned that erosion may spill over from the undeveloped lots to their existing property. Further, we **suggest that some cover or seeding of grass be done to prevent wind erosion.** Given the elevation of the development we believe wind erosion is as important as the water erosion from the project.
6. What is the anticipated effect on the ground water levels as a result of the proposed development? There already exists

a major ground water problem with most homes in the area having sump pumps that operate at least part of the year.

7. Will there be any utility easements created on the north side of the proposed development?
8. Has any consideration been given to the long or short term effect on existing adjacent home owner values?

As you can see, there are legitimate concerns by the adjacent home owners. And, we respectfully ask the Planning Commission give serious consideration to the issues raised by the surrounding home owners.

We ask that you keep the best interests of all parties in mind. A comment made at one of our neighborhood meetings was “why can’t this proposed development be a positive experience for everyone rather than it having a potential negative impact on some existing home owners?”

Thank you for your time and consideration. We will try to answer any questions the Commission may have.

East Brandon Home Owners.

| Name | Address | Years at Location |
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RECEIVED
DEC 13 2010

December 10, 2010

To: City of Bismarck
Planning and Zoning Commission

Re: Rocky Heights Development Plans

Dear Chairman Yeager and Planning Commission Members,

As owners of adjacent properties, located to the east on Winnipeg Drive, of the proposed Rocky Heights development, we are writing to express our collective concerns. We have met with our neighbors as well, whose properties are to the North and South of the proposed development and all of us have been able to review the storm water plans and the revised plans. There are many common concerns from all three sides but, this letter is meant to bring out specific concerns the Winnipeg Drive property owners have. Following, as enumerated, are these concerns:

- 1.) The plans show how the drainage will work and show structure placement as well for each lot. However, it fails to provide any discussion of how this drainage will be affected should the individuals purchasing each lot decide to change the location of the structure within the lot. There needs to be some avenue of controlling where the structures are located in each lot so as to maintain the integrity of the proposed drainage plan. We are not sure if these drainage forecasts also take into account potential and dramatic increase in flows, trading in the current native grasses and undisturbed soils for asphalt roofs, driveways and numerous other landscaping and hard scaping materials.
- 2.) Where is the final grading plan with all grading limits identified? How much earth is expected to be moved, not only with the initial development phase, but also within each lot after they have been sold and houses are being built? Will this dirt that is removed from the hilltop be re-used within the development?
- 3.) Is there a clear and concise plan for handling soil erosion on all 3 sides? We are concerned with the wind and water erosion that will occur without proper controls in place. All opened or disturbed areas of earth need to be immediately planted with grass, not weeds, and other proper methods of erosion control also being mandated. These controls must also be applied to each individual lot when prepared for home construction.
- 4.) Currently, all 3 sides have trees which have provided each of us with not only weather protection, but privacy. This was a large consideration in purchasing our properties and there is no reason these need to be or should be disturbed. A buffer zone of 60 ft or more could remedy this concern and an acceptable maintenance plan be drawn up between the developer and all adjacent property owners. This could also be included and enforced with any individual lot owner in the future.

There would be no buildings allowed, nor dog runs, nor camper or boat parking etc. This would be entirely dedicated to the green space, ensuring common privacy for the existing property owners and all future property owners equally, all the while preserving the wildlife habitats, peacefulness and property values for all.

- 5.) Is there a potential for assessments being made against Winnipeg Drive adjacent property owners for this development?
- 6.) Concerns for reduced property values have also been raised. Can the Planning Commission or City staff provide any insight into this issue? The resale values of our properties will most definitely be affected if this development does not have controls in place to guard against devaluation of all adjacent properties, now and in the future.
- 7.) There is also on the table a request for rezoning of part of this development area, allowing for twin homes. With the extreme pie-shaped lots as proposed, these types of structures will only further push the backyards further down the steep southern slope. This in part, references the concerns raised in #1 above. There has to be a specific site plan for each lot as well.

The increased traffic as a result of twin homes is also a major concern, especially when exiting from Aspen Court to North Washington Street, a major arterial roadway. The reverse is also a concern.

Please understand we who live along Winnipeg Drive are not seeking to stop the developers plans for the former Montz property. However, this is not a normal development either that the Planning Committee has reviewed in the past. This area has been relatively undisturbed for the last 30+ years and each adjacent property owner has spent a lot of hard earned money and sweat into making their individual property functional, beautiful and a huge source of pride. It's with all of this in mind that we, as adjacent property owners along Winnipeg Drive, ask each of you to take a closer at this plan.

We thank you in advance for your time, expertise and consideration of our concerns.

Winnipeg Drive Property Owners:

| | Name | Address | Signature |
|-----|----------------|-------------------|--------------------------------|
| 1.) | Matthew Stone | 3158 Winnipeg Dr. | Matthew R. Stone Jane Stone |
| 2.) | | | |
| 3.) | Kerrie Leclerc | 3700 Winnipeg Dr. | Kerrie Leclerc |

Winnipeg Property Owners letter, dated December 10, 2010, to City of Bismarck Planning & Zoning Commission.

| | Name | Address | Signature |
|------|------------------|---------------------|------------------|
| 4.) | Jan Allers | 3200 Winnipeg Dr | Jan Allers |
| 5.) | Jennifer Rechlin | 3212 Winnipeg Dr | Jennifer Rechlin |
| 6.) | Paul Rechlin | 3212 Winnipeg Dr. | Paul Rechlin |
| 7.) | DAVID MAYER | 3206 Winnipeg Dr | David Mayer |
| 8.) | Dawn Mayer | 3206 Winnipeg Dr | Dawn Mayer |
| 9.) | Linda J. Oster | 3218 Winnipeg | Linda J. Oster |
| 10.) | Mary D. Oster | 3218 Winnipeg Drive | Mary D. Oster |
| 11.) | | | |
| 12.) | | | |

DEC 14 2010

December 10, 2010

Planning Commission
City of Bismarck
221 N 5th Street
Bismarck, ND 58501

Re: Proposed Development – Rocky Heights

As neighbors bordering the south edge of the proposed Rocky Heights housing development, this letter expresses concerns from property owners of the Century Park Condominium Association that border the proposed development. We want to be on record that we are not opposed to developing the property; but we do propose that the development proceed in a thoughtful manner that will balance the needs of conservation of trees, drainage concerns, and privacy & noise factors for existing neighbors.

We respectfully ask for consideration of our primary areas of concern and our proposed solutions:

1. **Drainage and soil erosion** from the property flowing toward the south, southwest and southeast boundaries of the Rocky Heights development. We are concerned that construction will instigate drainage problems by disturbing soils, current drainages that are in place, underground springs and native prairie grasses.

We have recently learned that the developers of the above property plan to construct an eight-foot wide swale, extending from the east edge of the property to the west edge, and directly on the south side of the property line. The swale will be contoured so that all snowmelt and heavy rainfalls from the Rocky Heights property will minimize impacting our properties.

We would like to respectfully request this swale be placed a safe distance north of the row of pine trees near the southern border of the proposed Rocky Heights development, and that the swale be constructed to preserve the integrity of these pine trees. This action would create a significant solution of benefit to all parties.

2. **Privacy and noise concerns:** The hillside to the north of our property line has remained virtually undisturbed for the past 50 years. We think the proposed development will disturb an existing ecosystem of wildlife and native grass prairies. We have enjoyed watching deer, pheasants, grouse, partridge, wild turkeys and ducks and a wonderful, park-like atmosphere for 30 years. At the outset of the proposed development, many 50-year old trees were removed. These trees created a wonderful privacy and noise barrier to adjacent property owners.

We are very concerned that the developer and/or new property owners will remove more of the existing trees, without replanting desirable species of mature size to abate noise, lights and enhance privacy. We feel it is imperative to keep the pine trees near the southern boundary of the Rocky Heights development which will also be of tremendous benefit to the new property owners who purchase homes.

We propose that a 60-foot border of green space be established on the south edge of the proposed Rocky Heights development for conservation enhancement, privacy and noise abatement; and that tree and shrub plantings be kept in place, maintained and enhanced to create an attractive, natural barrier between the proposed development and our properties. This space will continue to enhance wildlife as well.

In addition, we also propose a 40-foot setback, in addition to the above, so that the rear of newly constructed homes will be at a distance from our property lines to insure not only the privacy of new property owners, but to adjacent property owners as well.

It is our desire to foster positive relationships with our new neighbors to the north by being proactive rather than reactive. These suggestions are presented as solutions that we believe will enhance our entire neighborhood, preserve and build property values, and create harmony that will benefit all of us. Thank you for consideration of our concerns.

Sincerely,

Century Park Condominium Association

Name: Sharon Certkoney
Address: 2958 Ontario Lane
Signature: Sharon Certkoney

Name: Jane Vetter
Address: 2974 Ontario Lane
Signature: Jane Vetter

Name: Keith Datt
Address: 2952 Ontario Ln
Signature: Keith Datt

Name: Sharol Jelch
Address: 2964 Ontario Ln
Signature: Sharol Jelch

Name: Rachel Latta
Address: 2976 Ontario Lane
Signature: Rachel Latta

Name: Camille Diebel
Address: 2992 Ontario Lane
Signature: Camille Diebel

Name: Lloyd Burgary
Address: 2956 Ontario Lane
Signature: Lloyd Burgary

Name:
Address:
Signature:

Name:
Address:
Signature:

Name:
Address:
Signature:

City of Bismarck
December 10, 2010
Page Four --

Name: *Ludwin + Dalara Berge*
Address: *3976 Ontario Lane*
Signature: *Ludwin + Dalara Berge*

Name: *Richard L Roehrig + Carol Roehrig*
Address: *2968 Ontario Ln*
Signature: *Richard L Roehrig + Carol Roehrig*

Name: *Ken Nelson*
Address: *2978 Ontario Ln*
Signature: *Ken Nelson*

Name: *Yvonne M. Hucker*
Address: *2986 Ontario Lane*
Signature: *Yvonne M. Hucker*

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3212 Winnipeg Drive
Bismarck, ND 58503
December 12, 2010

RECEIVED
DEC 15 2010

City Planning & Zoning Commission
Community Development Department--Planning Division
PO Box 5503
Bismarck, ND 58506-5503

Re: Proposed Rocky Heights Addition

As the previous owners of the "Montz Hill" property, we feel an obligation in part to ourselves, and even more so to our friends and neighbors, to comment on the proposed Rocky Heights addition. Our neighbors understandably must feel betrayed after years of promises by Bob "Doc" Montz that the property would never be developed and assurances by us that they need not fear any significant development, certainly not in the near future. Because this has been such a difficult, traumatic and contentious time for us personally, we feel written rather than verbal testimony is probably best.

The Montz property had been in my (Jennifer Montz Rechlin) family since my father and mother, Bob and Florence Montz, bought the property and built the hilltop home 51 years ago. Shortly after my father passed away in 2009, Jean Hilts, a 20+-year acquaintance of mine, approached me about buying the landmark homestead, and over the months professed love of the home, the view, the wildlife and trees, and the large-lot beauty that would allow them room to build an additional home for their son and daughter-in-law in a few years.

We priced and sold the home and acreage last spring to Rocky and Jean Hilts as a large-lot residence, but (unfortunately) we did not specify any conditions or limitations. We recognized that some sort of light development could be an eventual possibility, perhaps inevitable. But we were shocked shortly after closing to discover that the character and integrity of the landmark property and the neighborhood would undergo immediate and substantial change. Within a short time, we learned that proposed was construction of a city street, demolition of the home, excavation of the top of the hill, leveling of trees, rezoning, and platting of 12 lots for as many as 16 new residences.

We do not deny the rights of a landowner, but we do not believe those rights extend to threatening the health and safety of others, or the loss of privacy and destruction of what defines the neighborhood. We have many concerns with how the development is proposed, but we limit our comments to two basic issues that are of greatest concern, and suggestions as to how to address them.

First, we ask that there be established a permanent conservation, or greenbelt, easement. Of paramount importance is protection of the mature, well-established tree rows on the eastern edge of the development that provide effective wind, noise and visual screening for lots on Winnipeg Drive. Before we sold the property to the Hiltzes, we told them that there was significant interest by surrounding landowners in buying adjacent strips of land to assure the trees would remain. The Hiltzes' negative response was logical, considering their expressed desire to protect the trees by keeping the property as their own. But now, with the proposed development and multiple future owners, only a permanent easement can provide assurance that the trees will remain. We believe the Hiltzes should embrace this idea.

We suggest a permanent easement of 60 feet in depth along the entire eastern edge of the proposed development. The 60-foot easement would align with (and replace) the easement behind our home on Winnipeg Drive, thus providing consistency, and, importantly, permanence.

We believe it is advisable to extend conservation easements to both northern and southern boundaries, although, for the north side where trees were leveled earlier this month, staff is making recommendations that could at least partially protect some of the Brandon residences.

Our other concern regards an interplay of issues, mostly involving the traffic, zoning, drainage, and lot configurations at the top of the hill. Mostly, problems stem from the proposed R-10 zoning.

The R-10 lots, all on the hilltop and the cul-de-sac, are generally narrow frontage, pie-shaped lots (inexplicably, Lot 9, one of the smallest lots and a narrow frontage lot, is also proposed for R-10 zoning). The cul-de-sac allows for little on-street parking, and the narrow frontages on all but Lot 8 are not wide enough to accommodate the size of twin homes likely to be built on the view lots unless they are set back some undefined distance. This would likely require, or at least encourage, considerable setbacks of the (twin) homes—generally further to the south, but also to the east and west—that would not only add to the impervious roof surfaces, but also require lengthy impervious driveway surfaces for access and perhaps additional pavement for parking. This would exacerbate existing drainage and storm water problems.

The resulting undefined siting of the homes, whether to accommodate size or to capitalize on a view, could not only add to, but also change the pattern of drainage in now unpredictable directions, sending storm water flow towards yards and homes that could least accept it. This issue gives even more justification for buffer zones to help absorb the increased and unpredictable storm water flow.

Also, the more residences permitted by the plat and zoning, the greater the traffic, the frustration, and the certainty of accidents at the busy, offset intersection at Washington Street.

To address these concerns, we recommend the following: inclusion of a permanent conservation easement, at a minimum along the entire eastern border of the development; denial of R-10 zoning in the cul-de-sac area; establishment of maximum allowable front-yard setbacks; and acceptable siting plans for each lot in the subdivision prior to final plat approval.

Our horrible mistake and misjudgment are our responsibility, and we obviously are not asking you to undo what can't be undone; regardless, the unique landmark home, one of the tallest spruce trees in the city, and all the north perimeter trees are already gone, even before Dr. and Mrs. Hilts' request comes before you. We also are not saying a landowner has no rights to develop, regardless of what we believed to be their intent.

Development is not synonymous with progress, and bad development is the antithesis of progress. In our judgment, and we hope yours, this is not good development.

Protection provided by a permanent greenbelt easement, appropriate setbacks, and reduced density will not only help protect the existing neighborhood, but also assure greater value to future residents of Rocky Heights. Sometimes less is more, and good development that is safe and appealing will have greater value than one fraught with problems.

Sincerely,

Paul and Jennifer (Montz) Rechlin